

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEANA COLEMAN,

Plaintiff,

v.

AMERICAN COMMERCE INSURANCE
COMPANY, a foreign insurance company,

Defendant.

Case No. 09-5721RJB

ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT RE
FEES

This matter comes before the Court on the above captioned motion (Dkt. 84). The Court has considered the motion, responses thereto, and the remainder of the file herein.

On July 8, 2010, Defendant filed a motion for summary judgment regarding *Olympic Steamship* fees. Dkt. 84. Defendant states that Plaintiff is not entitled to any *Olympic Steamship* fees as there has been no denial of coverage. *Olympic Steamship* fees is an award of fees in any legal action "where the insurer compels the insured to assume the burden of legal action, to obtain the full benefit of his insurance contract." *Olympic S.S. Co. v Centennial Ins. Co.*, 881 P.2d 673 (Wash. 1991). These fees arise "only when an insurer wrongfully denies coverage." *Greengo v. Pub. Employees Mut. Ins. Co.*, 959 P.2d 657 (Wash. 1998).

Defendant's motion for summary judgment is premature. The issue of whether coverage was or was not denied is still not decided. There is a pending motion for reconsideration (Dkt. 103) that will examine the issue of coverage denial. Therefore, Defendant's motion for summary

1 judgment should be denied without prejudice. The Defendant may raise this issue again, if
2 appropriate.


3 The Court does hereby find and **ORDER**:

4 (1) Defendant's Motion for Summary Judgment Re Olympic Steamship Fees (Dkt. 84) is
5 **DENIED** without prejudice; and

6 (2) The Clerk is directed to send copies of this Order all counsel of record and any party
7 appearing *pro se* at said party's last known address.

8 DATED this 10th day of August, 2010.

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Robert J Bryan
United States District Judge